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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JOHN DOE, an individual;

Plaintiff,

v.

FLAVA WORKS, INC., an Illinois  
corporation; and ROES 1 through 10,  
inclusive,

Defendants.

CASE NO.:

**COMPLAINT FOR  
DECLARATORY RELIEF**

**DEMAND FOR JURY TRIAL**

1 Plaintiff John Doe<sup>1</sup> hereby complains against Defendant Flava Works, Inc.  
 2 (“Flava Works”) and Roes 1-10 inclusive, (collectively referred to as “Defendant”)  
 3 as follows.

#### 4 SUMMARY OF THE CASE

5 1. Defendant Flava Works operates pornographic websites for gay men.  
 6 Capitalizing on the social stigma of its own product, Flava Works has apparently  
 7 discovered a lucrative side business: extorting money from former subscribers by  
 8 threatening to expose them as consumers of gay porn.

9 2. To lend an air of legitimacy, Defendant’s extortion takes the form of a  
 10 threatened lawsuit. Flava Works begins by privately accusing its victim of illegally  
 11 sharing content on the internet—without regard to whether such accusation is true—  
 12 and then threatens to file a public lawsuit unless the victim pays a “settlement.”  
 13 Even if the accusation is false, most users reluctantly pay rather than be outed in  
 14 court documents as a gay porn user—especially if the victim has chosen to keep his  
 15 sexual orientation private.

16 3. Defendant is now trying to blackmail Plaintiff in just this manner. In  
 17 early June, Plaintiff was shocked to receive a letter from Phillip Bleicher,  
 18 Defendant’s CEO, falsely claiming that “Flava Works is aware that you have been  
 19 ‘pirating’ the content from its website(s) for your own personal financial benefit.”  
 20 Aware that Plaintiff is a prominent public figure, Bleicher explained that Plaintiff  
 21 could avoid a public lawsuit only by paying \$97,000, an amount that would increase  
 22 to \$525,000 if not surrendered quickly. Bleicher was not subtle about the purpose of  
 23 the payment being to avoid public humiliation, explaining that “[I]f you act  
 24 promptly you will avoid being named as a Defendant in a lawsuit.”

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25  
 26  
 27 <sup>1</sup> Concurrently with this Complaint, Plaintiff has filed an ex parte application for an order allowing  
 28 him to maintain this action under the pseudonym John Doe (with full disclosure of his identity to  
 Defendant and to the Court). The requested order also requires Defendant to name Plaintiff under  
 his pseudonym in any counterclaim or new action it may file.

4. When payment was not forthcoming, Bleicher's threats became more brazen. On July 6, 2017, he noted Plaintiff was an "entertainment industry" figure, and specifically threatened to issue a press release trumpeting the allegations. He again offered one last chance to settle the matter, generously indicating "I will hold off on a press release for the time being." On July 27, 2017, Bleicher (now through counsel) increased his demand to \$150,000, unabashedly justifying the figure with reference to Plaintiff's "status, his career and his wealth."

5. Defendant's demand for hush money is nothing more than a cynical attempt to extort Plaintiff by threatening to expose him as a consumer of gay adult content. Rather than submit to such demands, Plaintiff asks the Court for leave to defend himself under a fictitious name, and seeks a judicial declaration that he has not committed copyright infringement in that (a) the factual predicate of Defendant's claim is false because Plaintiff did not perform the alleged acts; (b) Plaintiff has a complete affirmative defense to Defendant's threatened copyright infringement claim under the doctrine of "copyright misuse;" and (c) Plaintiff has a complete affirmative defense to Defendant's threatened claims under the doctrine of unclean hands.

## JURISDICTION AND VENUE

6. This is an action for declaratory judgment arising under (i) the United States Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the “Copyright Act”); and (ii) 28 U.S.C. §§ 2201 and 2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure. Thus, this Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338. This Court also has diversity jurisdiction over this action based upon 28 U.S.C. § 1332 in that there is complete diversity between Plaintiff and Defendant and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's claims occurred in the Central

1 District of California as Defendants: (a) are or claim to be authorized to conduct  
2 business in this District and have intentionally availed themselves to the laws within  
3 this District; (b) currently do substantial business in this District; and (c) are subject  
4 to personal jurisdiction in this District.

### 5 **THE PARTIES**

6 8. At all times relevant to this action, Plaintiff John Doe was a resident of  
7 Los Angeles County, California.

8 9. Plaintiff is informed and believes and thereon alleges that, at all times  
9 relevant to this action, Defendant Flava Works, Inc. ("Flava Works") was a business  
10 entity incorporated under the laws of the State of Illinois.

11 10. The true names and capacities, whether individual, corporate, associate,  
12 or otherwise, of Defendants sued herein as ROES 1 through 10, inclusive, are  
13 currently unknown to Plaintiff, who therefore sues Defendants by such fictitious  
14 names. Plaintiff is informed and believes, and thereon alleges, that each of the  
15 Defendants designated herein as ROES is legally responsible in some manner for the  
16 events and happenings referred to herein and caused injury and damage proximately  
17 thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of court to amend  
18 this Complaint to reflect the true names and capacities of the Defendants designated  
19 hereinafter as ROES when the same have been fully ascertained.

20 11. Plaintiff is informed and believes, and based thereon alleges that, at all  
21 times mentioned herein, each of the Defendants was the agent, servant, employee,  
22 co-venturer, and co-conspirator of each of the remaining Defendants, and was at all  
23 times herein mentioned acting within the course, scope, purpose, consent,  
24 knowledge, ratification, and authorization of and for such agency, employment, joint  
25 venture and conspiracy.

## FACTUAL BACKGROUND

### A. Defendant's Pattern of Extortion

12. Phillip Bleicher ("Bleicher") is CEO of Defendant Flava Works, and has served in that capacity since 1999.

13. Flava Works is a largely subscription-based adult entertainment company that specializes in ethnic gay adult content. It's business activities, as well as the wrongful conduct alleged herein, are directed at California and this district.

14. To access certain content on the Flava Works websites, users must register for and/or subscribe to a paid membership, which requires subscribers to supply their personal information. While users are free to use something other than their real names, full identifying information must be supplied to facilitate the requisite credit card payment.

15. Upon information and belief, Defendant has, for more than a decade, engaged in a pattern of extortion against subscribers of Flava Works' websites, as described above. Public court records reveal that Defendant has filed a number of such boilerplate lawsuits (including lawsuits against hundreds of Doe defendants at one time); and it stands to reason that far more privately threatened lawsuits never materialized because the defendant simply pays up (i.e. because the extortion is successful). This manner of using the courts as a safe place to extort, given the benefits of the litigation privilege, is not something that is practiced only by Defendant. In 2013, Judge Wright of this district explained how the business model works:

Plaintiffs have outmaneuvered the legal system. They've discovered the nexus of antiquated copyright laws, paralyzing social stigma, and unaffordable defense costs. And they exploit this anomaly by accusing individuals of illegally downloading a single pornographic video. Then they offer to settle—for a sum calculated to be just below the cost of a bare-bones defense. For these individuals, resistance is futile; most reluctantly pay rather than have their names associated with illegally downloading porn. So now, copyright laws originally designed to compensate starving artists allow, starving attorneys in this electronic-media era to plunder the citizenry." [Ingenuity 13, LLC v. John Doe, Case No. 2:12-cv-8333-ODW(JCx), May 6, 2013 Order Issuing Sanctions.]

1           16.    Upon information and belief, Defendant targets its users by using the  
2 personal information those subscribers provided in good faith to access and pay for  
3 Flava Works' content. Upon information and belief, after choosing its victims,  
4 Defendant sends boilerplate "cease and desist" letters demanding arbitrary amounts  
5 of money while wrongly accusing unsuspecting subscribers of purportedly  
6 downloading and/or uploading Flava Works' content through BitTorrent websites  
7 and webforums.

8           17.    Upon information and belief, over the years of litigation initiated by  
9 Defendant against its purported customers, Defendant has never made any contested  
10 evidentiary showing of infringement, let alone willful infringement. Rather,  
11 knowing that these cases involve pornographic media that may be embarrassing to  
12 its subscribers should their activity on Defendant's websites become public,  
13 Defendant attempts to shake down these individuals into settling with Flava Works.

14           18.    Defendant's coercive tactics, designed to shame its customers into  
15 settling for significant amounts, include threats of exposing its subscribers through  
16 "press releases" and federal lawsuits, as Defendant is doing to Plaintiff in the present  
17 case.

18 **B.    Defendant's Attempt to Extort Plaintiff**

19           19.    Plaintiff is a prominent public figure and leader in the LGBT  
20 community.

21           20.    On June 6, 2017, Bleicher, while acting in his capacity as CEO for  
22 Flava Works, sent a "Settlement Demand and Cease and Desist" email to Plaintiff,  
23 without prior warning, accusing Plaintiff of pirating pornography, and demanding  
24 that Plaintiff pay \$97,000. If the money was not paid within ten days, Bleicher  
25 warned, Defendant would initiate litigation against Plaintiff, publically accusing him  
26 of being a consumer and pirate of copyrighted gay adult entertainment. Defendant  
27 Bleicher further warned that after the ten-day deadline, Defendant's settlement  
28 demand would balloon to \$525,000.00.

1           21.    On June 7, 2017, Bleicher sent Plaintiff another email, in which he  
2   stated that he had not yet “assigned this to an attorney,” as he was still “willing to  
3   work with [Plaintiff] one on one.” Bleicher again threatened that if Plaintiff did not  
4   agree to a “settlement” by the next week, Defendant would file a federal lawsuit  
5   against him, thereby exposing him publicly.

6           22.    On July 6, 2017, Bleicher sent another email to Plaintiff, in which  
7   Bleicher alluded to Plaintiff’s high-profile status, and to the potential publicity that a  
8   lawsuit would bring. In this email, Bleicher specifically threatened to issue a press  
9   release, publicly announcing Defendant’s intent to sue Plaintiff for allegedly  
10   pirating copyrighted gay adult content (“you can’t force me from announcing our  
11   intent to sue him if we so choose to do so. And once we get our complaint filed - it  
12   will be a matter of public record anyway. However, I will hold off on a press release  
13   for the time being.”).

14          23.    In these emails, Defendant asserts, without foundation or basis, that  
15   Plaintiff has uploaded Defendant’s copyrighted videos to various BitTorrent  
16   websites, and webforums, thereby allowing other internet users to freely download  
17   Defendant’s videos. That accusation is false. The misconduct alleged by Flava  
18   Works is pure pretense: a false premise upon which to threaten a lawsuit.

19          24.    Along with his demand letter, Bleicher sent Plaintiff 85 pages of  
20   materials that Defendant claims prove the alleged infringement. But they do no such  
21   thing. The materials do not reveal or expose infringement of any sort. Defendant’s  
22   real purpose in sending this “proof” was to demonstrate just how humiliating it  
23   would be to defend against Flava Works’ scurrilous charges. Defendant’s materials  
24   consist largely of screenshots of extremely graphic images of pornography, which  
25   Defendant *implies* that Plaintiff has viewed—but which are completely irrelevant  
26   given that they are not Flava Works content. Nevertheless, Bleicher assured Plaintiff  
27   that these materials would all be included in a publicly filed lawsuit if he refused to  
28   accede to Defendant’s payment demands.



1           25. Moreover, the money amount demanded by Defendant for the  
2 purported “infringement” is completely arbitrary, evidenced by the existence of  
3 another, almost identical demand letter Defendant sent to another one of its  
4 subscribers for the same alleged BitTorrent-related conduct, where Defendant  
5 demanded only \$3,500. Notably, the content of Defendant’s email communication  
6 evidences their knowledge that Plaintiff is a high-profile individual and provides  
7 context for their exorbitant demands in the present case. Indeed, Defendant  
8 acknowledges that Plaintiff’s wealth and profile are the reason for its excessive  
9 demand.

10           26. Defendant’s conduct towards Plaintiff constitutes criminal extortion as  
11 a matter of law. More specifically, Defendant, with intent to extort money, sent  
12 Plaintiff letters and emails expressing and implying a threat to accuse Plaintiff of a  
13 crime.

14           27. Defendant’s actions described above are also wrongful in that they  
15 constitute the misuse and unauthorized use of Plaintiff’s and others’ confidential  
16 information provided for the purpose of making a credit card payment.

17           28. Defendant Flava Works’ bad faith actions have been explicitly  
18 recognized by the judicial branch. In 2013, finding that Flava Works had made  
19 numerous misrepresentations to the Court, including submitting a forged document  
20 as evidence, United States District Judge Milton I. Shadur held that Flava Works  
21 had committed "the most egregious fraud on the court that this Court has  
22 encountered in its nearly 33 years on the bench." (*Flava Works, Inc. v. Momient*,  
23 2013 WL 1629428).

## 24                                   **FIRST CLAIM FOR RELIEF**

25                                   (Declaratory Relief)

26           29. Plaintiff incorporates the allegations of each foregoing paragraph as  
27 though fully set forth herein.  
28



1           30.    An actual, continuing and justiciable controversy exists between  
2 Plaintiff and Defendant relating to Plaintiff's non-infringement of Flava Works'  
3 copyrights, as set forth above. Defendant contends, without justification, that  
4 Plaintiff has infringed one or more copyrights allegedly held by Flava Works by  
5 uploading Defendant's copyrighted material to a BitTorrent website. Based on such  
6 allegations of infringement, Defendant has threatened to file a lawsuit against  
7 Plaintiff under the Copyright Act. Plaintiff denies, in full, any such purported  
8 infringement.

9           31.    More specifically, Plaintiff contends that he has not infringed Flava  
10 Works' copyrights as alleged, for reasons including (a) that the factual predicate of  
11 Defendant's claim is false because Plaintiff did not perform the acts alleged by  
12 Defendant; (b) Plaintiff has a complete affirmative defense to Defendant's  
13 threatened copyright infringement claim under the doctrine of "copyright misuse,"  
14 as explained below; and (c) Plaintiff has a complete affirmative defense to  
15 Defendant's threatened claims under the doctrine of unclean hands.

16           32.    With regard to his affirmative defense of copyright misuse, Plaintiff  
17 asserts that the copyright infringement claims threatened by Defendant necessarily  
18 fail because they contravene the public policies grounding copyright law, in that  
19 Defendant has engaged in a pattern of extortion and harassment against others,  
20 including their own subscribers (and specifically Plaintiff), as described above.

21           33.    With regard to his affirmative defense of unclean hands, Plaintiff  
22 asserts that the copyright infringement claims threatened by Defendant necessarily  
23 fail because Defendant has asserted purported copyrights and alleged infringement  
24 of such copyrights, not for the purpose of protecting Defendant's intellectual  
25 property, but as a means of harassing and extorting Plaintiff, invading Plaintiff's  
26 privacy and improperly using Plaintiff's confidential information, obtained by  
27 Defendant through operation of the Flava Works websites. Further, as alleged  
28

1 above, Defendant's conduct is inequitable and such conduct relates to the subject  
2 matter of the Defendant's claims of infringement.

3 34. Accordingly, Plaintiff is entitled to a judicial declaration of non-  
4 infringement, and a finding that he is not liable for infringing any valid copyright  
5 owned by Flava Works, either directly or by inducing others to infringe or by  
6 contributing to infringement by others. Plaintiff requests that this Court determine  
7 and adjudge that Plaintiff has not infringed any copyrighted material of Defendant.

8 **PRAYER**

9 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

- 10 1. For a judicial declaration that Plaintiff has not infringed Defendant's  
11 copyrights, as alleged by Defendant.  
12 2. For attorneys' fees as may be appropriate; and  
13 3. For further relief, as the Court may deem just.

14  
15 DATED: August 3, 2017

GERAGOS & GERGAGOS, APC

16  
17 By: /s/  
18 BEN J. MEISELAS  
19 Attorneys for Plaintiff  
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